

LAWS OF GUYANA

**LEGITIMACY ACT
CHAPTER 46:02**

**Act
14 of 1932**

Current Authorised Pages

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CHAPTER 46:02

LEGITIMACY ACT

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SCHEDULE—Registration of Births of Legitimated Persons.

1953 Ed.
c. 165

An Act to amend the Law relating to children born out of wedlock.

14 of 1932

[14TH MAY, 1932]

1. This Act may be cited as the Legitimacy Act.

Short title.

2. In this Act—

Interpre-
tation.

“date of legitimation” means the date of the marriage leading to the legitimation;

“disposition” means an assurance of any interest in property by any instrument whether *inter vivos* or by will;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his estate;

“legitimated person” means a person legitimated by this Act;

“will” includes codicil.

3. (1) Subject to this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage did or shall, if

Legitimation
by
subsequent
marriage of
parents.

L.R.O. 1/1973

the father of the illegitimate person was or is at the date of the marriage domiciled in Guyana, render that person, if he is or was living, legitimate from the date of the marriage.

(2) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in property save as is hereinafter in this Act expressly provided.

Schedule.

(3) The provisions contained in the Schedule shall have effect with respect to the re-registration of the births of legitimated persons.

Declarations
of legitimacy
of legitimated
persons.
c. 45:02.

4. A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in Guyana or elsewhere and whether a natural-born Commonwealth citizen or not, present a petition under Part II of the Matrimonial Causes Act, and that Part, subject to such necessary modifications as may be prescribed by rules of court, shall apply accordingly.

Rights of
legitimated
persons, etc.,
to take
interests in
property.

5. Subject to this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest in the estate of an intestate or under any disposition in like manner as if the legitimated person had been born legitimate.

Succession
on intestacy
of legitimated
persons and
their issue.

6. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

Application
to illegitimate
person dying
before
marriage of
parents.

7. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person (including those relating to the rate of estate duty) shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

Personal
rights and
obligations
of legitimated
persons.

8. A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to this Act, the provisions of any Act relating

to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

9. Where a legitimated person or any relative of a legitimated person takes any interest in property, any estate duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated persons had been born legitimate. Estate duty.

10. (1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than Guyana, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in Guyana be recognised as having been so legitimated from the commencement of this Act or from the date of the marriage whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law. Provisions as to persons legitimated by extraneous law.

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person (including those relating to the rate of estate duty) shall apply in the case of a person recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised; and accordingly, this Act shall have effect as if references therein to a legitimated person, included a person so recognised as having been legitimated.

(3) For the purposes of this section, the expression "country" includes any Commonwealth country as well as a foreign country.

11. (1) Where, after the commencement of this Act, the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her property, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate. Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other.

(2) Where, after the commencement of this Act, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent and if his mother does not survive him then such legitimate

and illegitimate children of his mother as survive him and the persons entitled to succeed them on intestacy shall be entitled to take any interest therein to which they would have been entitled if all such children and the child had been born legitimate.

Savings.

12. Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the commencement of this Act, or affect any rights under the intestacy of a person dying before the commencement of this Act.

s. 3(3)

SCHEDULE

REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS

Construction.
c. 44:01.

1. This Schedule shall be construed with the Registration of Births and Deaths Act.

Conditions
of re-
registration.
c. 44:01.

2. The Registrar General may, on production of such evidence as appears to him to be satisfactory, authorise at any time the re-registration of the birth of a legitimated person whose birth is already registered under the Registration of Births and Deaths Act, and such re-registration shall be effected in such manner and at such place as the Registrar General, with the approval of the Minister, may by regulations prescribe:

Provided that the Registrar General shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

(a) the name of a person acknowledging himself to be the father of the legitimated person has been entered in the register in pursuance of section 31 of the Registration of Births and Deaths Act; or

(b) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction; or

c. 45:02.

(c) a declaration of the legitimacy of the legitimated person has been made under Part II of the Matrimonial Causes Act, as amended by this Act.

Parents to
furnish
information.

3. It shall be the duty of the parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar General information with a view to obtaining the re-registration of the birth of that person, that is to say—

(a) if the marriage took place before the commencement of this Act, within six months of such commencement;

(b) if the marriage takes place after the commencement of this Act, within three months after the date of the marriage.

4. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar General may at any time after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this Act, or either of them, to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at a Registrar's Office or at any other place appointed by him within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

Compelling
attendance
of parents.

5. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall not affect the legitimation of that person.

Default of
parents not
to affect
legitimation.

SUBSIDIARY LEGISLATION

Reg.
3/9/1934
20/1950

**RE-REGISTRATION OF BIRTHS
(LEGITIMATED PERSONS)
REGULATIONS**

made under paragraph 2 of the Schedule to the Act

Citation.
and
construction.
c. 44:01.
Sub. Leg.

1. These Regulations may be cited as the Re-registration of Births (Legitimated Persons) Regulations, and shall be construed with the Registration of Births and Deaths Regulations hereinafter referred to as the Principal Regulations.

Meaning of
"informant."

2. In these Regulations, "informant" means a parent of a legitimated person whose duty it is to give information with a view to the re-registration of the birth of such person.

Information
to be for-
warded by
informant.

3. Before the Registrar General authorises the re-registration of the birth of a legitimated person, the informant shall forward to him—

(a) a certified copy from the register of the entry of the birth of the legitimated person;

(b) a certified copy from the original marriage register or from the duplicate original marriage register of the entry of the marriage of the parents; and

(c) a statutory declaration that the copy from the register of births at (a) relates to the person of the contracting parties in the copy from the marriage register at (b).

Attendance
of informant
before Regis-
trar.

4. Where re-registration is authorised by the Registrar General, the informant, or, if there are two informants, such one of them as the Registrar General may direct, shall, subject as hereinafter provided, attend personally at the office of the registrar of births and deaths of the division in which the informant resides within such time as the Registrar General may specify.

Manner and
form of re-
registration.

5. (1) (a) The registrar of the division in which the informant resides, on receiving the Registrar General's written authority to

re-register the birth of a legitimated person, shall, in the presence of the informant, enter the birth in the birth register in the manner and form set out in these Regulations, and the informant shall sign the register in column 7 of the entry in the presence of the registrar.

(b) The registrar shall enter in columns 1 to 6 (inclusive) the particulars stated in the written authority as particulars to be entered in those columns on the information given to the Registrar General.

(c) The registrar shall append to the signature of the informant in column 7 the description and address of such informant as required by the written authority to be entered in that column.

(d) The registrar shall enter in column 8 the date on which the entry is made in the manner and form provided in regulation 71 of the Principal Regulations in respect of an entry of the date of registration, followed by the words "On the authority of the Registrar General".

(e) The registrar shall sign his name in column 9 adding the word "Registrar" after his signature.

(2) Where re-registration is authorised by the Registrar General and no informant is living, then, if the legitimated person is an infant, his guardian may attend personally at the office of the registrar and sign the register in column 7 of the entry; and if the legitimated person is not an infant the registrar shall, if so directed in the written authority of the Registrar General, enter in column 7 the words "On the authority of the Registrar General," and omit such words from column 8.

Re-registra-
tion where
no informant
is living.

(3) In this regulation the columns referred to are the columns in Form 1 in the First Schedule to the Registration of Births and Deaths Act. c. 44:01.

6. (1) An informant who has removed before re-registration from the division in which the birth took place to some place out of Guyana may, with the consent of the Registrar General, instead of attending at the office of the registrar to sign the register, make and sign a declaration in writing of the particulars to be entered in the register on the information of such informant.

Re-registra-
tion in case
of removal
out of
Guyana.
[Reg. 20/1950]

(2) In the case of an informant who is in any Commonwealth country, the declaration shall be made before a judge, court, notary public or person lawfully authorised to administer oaths in such country, and in the case of an informant who is in any foreign parts out of the Commonwealth, the declaration shall be made before a consular officer of Guyana.

(3) The declaration shall be in such form and shall contain such particulars as the Registrar General may require, being particulars to be entered in the register on the information of such informant.

(4) Upon receipt of the declaration duly attested, the Registrar General may send it, together with his written authority for re-registration to the registrar of the division in which the birth took place.

(5) The registrar of the division in which the birth took place on receiving the Registrar General's written authority for re-registration together with a declaration made and signed in pursuance of this regulation, shall enter the birth in the register in the manner hereinbefore provided, notwithstanding that no informant is present, and in column 7 he shall write the name of the informant as signed in the declaration, followed by the description and address of the informant as stated in the written authority, and append the words "as per declaration dated....." and the date on which the declaration was made and signed.

Copies of entries and authorities to be sent to Registrar General.

7. The registrar on making the entry in the register shall forthwith make and deliver to the Registrar General a certified copy of such entry; and shall, on delivering to the superintendent registrar a certified copy of entries of births registered by him during the preceding three months for transmission to the Registrar General, deliver with such certified copy to the superintendent registrar, all written authorities received from the Registrar General with reference to any re-registered entries contained in such certified copy; and the superintendent registrar shall deliver such authorities to the Registrar General.

Reference to re-registration to be made in previous entry.

8. (1) The Registrar General having the custody of the register in which the birth was previously entered shall, or the registrar having the custody of such register shall, when so directed by the Registrar General, cause the previous entry of the birth to be marked in the margin with the words "Re-registered under the Legitimacy Act in the Division of District on and the registrar when he has the custody of such register shall forthwith make a certified copy of such previous entry, including a copy of the marginal note, and deliver such copy to the Registrar General.

c. 44:01.

(2) The marginal note shall be deemed to be part of the entry and a certified copy of the entry given under the Registration of Births and Deaths Act shall include the marginal note.

9. Where application is made for a certified copy of the entry of the birth of a person whose birth has been re-registered, the Registrar General or the registrar, as the case may be, shall supply a certified copy of the entry of re-registration; and no certified copy of the previous entry shall be given except under the direction of the Registrar General.

Certified
copies of
entries of
re-registra-
tion.



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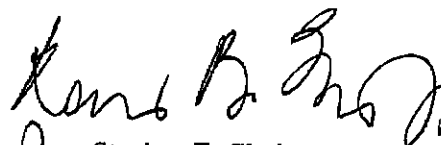
January 21, 2005
LL File No. 2005-01529

Dear Ms. Close:

In response to your request of January 6, 2005, we have enclosed a copy of the opinion written in 1990 by the Directorate of Legal Research in the Law Library of Congress that was cited by the Board of Immigration Appeals in the case of *Re Goorahoo*, 20 I. & N. 782 (B.I.A. 1994). This opinion interprets Guyana's Children Born Out of Wedlock (Removal of Discrimination) Act, 1983. 1983 Guy. Laws, No. 12.

It has been our pleasure to assist you, and we hope that this opinion will be helpful. The Law Library of Congress is the legal research arm of the U.S. Congress; Congressional workload permitting, the Law Library also serves the legal research needs of the other branches of the U.S. government and renders reference service to the general public. Should you need further assistance in this or any matter pertaining to international, comparative, or foreign law, please contact the Director of Legal Research, Walter Gary Sharp, Sr., by e-mail at wsharp@loc.gov or by fax at (202) 707-1820.

Sincerely,


For Stephen F. Clarke
Senior Legal Specialist

Enclosure

Barbara Close
Librarian
U.S. Courts Library

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LEGITIMATION IN GUYANA

Introduction

In 1916, the legislature of the Colony of British Guyana passed what is now referred to as the Civil Law of Guyana Act.¹ The purpose of this statute was to abrogate virtually all of the prevailing Roman-Dutch law and replace it with English common law. To avoid causing unnecessary confusion, the original Civil Law ordinance listed a number of specific fields that were to be expressly governed by the new legal regime once it came into force on January 1, 1917. Included among these listed fields was the law of "parent and child."² Thus, the rules of English common law respecting the status of children were extended to Guyana just over seventy years ago.

The Legitimacy Act

At English common law, a child born to unmarried parents is illegitimate and cannot be legitimated through any subsequent actions of his or her parents.³ In 1926, the Parliament of the United Kingdom amended this common law rule by creating the Legitimacy Act.⁴ Section 3 of this statute provided that a child born to unmarried parents was legitimated by their subsequent marriage as long as neither of his or her parents was married to a third party at the time he or she was born.⁵

¹ Civil Law of Guyana Act, Guy. Rev. Laws, ch. 6:01 (1977).

² *Id.* 3.

³ Adoption is not recognized at common law but is authorized by statutes enacted in all common law jurisdictions.

⁴ Ch. 60. 16 & 18 Geo. 5.

⁵ *Id.* 8.

In 1932, the legislature of British Guiana adopted its own Legitimacy Ordinance.⁶ Like its British model, this statute provided that a child born to unmarried parents was legitimated by their subsequent marriage. The only difference between these two enactments was that unlike the British enactment, the colonial law did not contain an exception for child born out of an adulterous relationship.

The Constitution of Guyana

Guyana became an independent country in 1966.⁷ Fourteen years later, the Government replaced its original Constitution with a new document intended to promote certain socialistic objectives.⁸ Section 30 of the Constitution of the Co-operative Republic of Guyana, 1980, provides as follows: "Children born out of wedlock are entitled to the same legal rights and legal status as are enjoyed by children born in wedlock. All forms of discrimination against children on the basis of their being born out of wedlock are illegal."⁹

This section is contained in a chapter entitled the "Principles and bases of the political, economic, and social system."¹⁰ Immediately preceding this chapter is another section that states: "[The] Constitution is the supreme law of Guyana and, if any other law is inconsistent with it, that other law shall, to the extent of the inconsistency, be void."¹¹

Taken alone, the two paragraphs quoted above would appear to have abolished the legal distinction between legitimate and illegitimate children in Guyana and to have directed the courts to strike down any law that might discriminate against children born out of wedlock. However, the chapter of the 1980 Constitution that is devoted to establishing the "Principles and bases of the political, economic, and social system" concludes with a section that reads: "It is the duty of

⁶ Guy. Rev. Laws, ch. 46:02 (1976).

⁷ Constitution of Guyana, Guy. Rev. Laws, ch. 1:01 (1977).

⁸ Constitution of the Co-operative Republic of Guyana Act, 1980, Guy. Laws, ch. 2.

⁹ *Id.* 30.

¹⁰ *Id.* Ch. 2.

¹¹ *Id.* 8.

Parliament, the Government, the courts and all other public agencies to be guided in the discharge of their functions by the principles set out in this Chapter, and Parliament may provide for any of those principles to be enforceable in any court or tribunal."¹²

This provision suggests that instead of being included in the Constitution for the purpose of binding the National Assembly and the courts, the "Principles and bases of the political, economic, and social system" were only intended to serve as goals that the National Assembly was obliged to try to help Guyana reach through the enactment of appropriate legislation. Therefore, in the absence of any judicial considerations of section 30 of the Constitution has not been construed in any reported decisions issued by the courts of Guyana, it is not clear whether the status of children born to unmarried parents was not legally affected by the developments of 1980.

The Children Born Out of Wedlock (Removal of Discrimination) Act, 1983

In recent years, a number of common law jurisdictions in the Caribbean region have passed statutes modeled after New Zealand's Status of Children Act, 1969.¹³ These enactments all purport to abolish the legal distinction between legitimate and illegitimate children for all purposes other than for determining citizenship and domicile, establishing transitional rules, and the construction of certain terms used in testamentary documents.¹⁴

Unlike many of its former sister colonies, Guyana has not enacted a Status of Children Act. However, in 1983, the National Assembly did adopt a Children Born Out of Wedlock (Removal of Discrimination) Act.¹⁵ While this statute does not establish a general rule that all children are to be regarded as being of equal status regardless of whether they have been born to married or unmarried

¹² *Id.* 39.

¹³ 4 N.Z. Repr. Stat. 893 (1979).

¹⁴ See, for example, the Status of Children Act, 17 Jam. Rev. Laws, 3-4 (1980).

¹⁵ 1983 Guy. Law, ch. 12.

parents, it did amend a number of extant enactments to eliminate references to illegitimacy and to give all children equal rights under them.¹⁶

The question of whether Guyana's Children Born Out of Wedlock (Removal of Discrimination) Act should be regarded as being equivalent to a Status of Children Act is not one that can be answered with an unqualified response. On one hand, it can be said that children born to unmarried parents in Guyana seem to now enjoy all the legal rights enjoyed by children born to unmarried parents in such countries as Barbados, Jamaica, and Trinidad and Tobago even though Guyana still has a Legitimacy Act that only provides for the legitimation through the subsequent marriage of a child's natural parents. The reason for this is that while most Status of Children Acts have repealed the legitimation laws that were previously in force within their territories, not all of them have done so. For example, Jamaica's Status of Children Act did not repeal that country's Legitimation Act.¹⁷ Nevertheless, in *Matter of Clahar*, the Board of Immigration Appeals held that the enactment of Jamaica's Status of Children Act had effectively legitimated all children born to unmarried parents in that country.¹⁸

Despite the fact that children born to unmarried parents in Guyana now seem to enjoy all the legal rights enjoyed by children born to unmarried parents in such countries as Barbados, Jamaica, and Trinidad and Tobago, there is one major difference between Guyana's Children Born Out of Wedlock (Removal of Discrimination) Act and its neighbors' Status of Children Acts. Unlike the latter, the former does not purport to render illegal all forms of discrimination against persons born to unmarried parents that it does not sanction. Thus, if the National Assembly were to adopt a statute that denies children born out of wedlock a right enjoyed by children born in wedlock, it would not contravene the Children Born Out of Wedlock (Removal of Discrimination) Act. By contrast, such a statute would offend any of the Status of Children Acts unless it was declared to operate notwithstanding the

¹⁶ *Id.* § 1 and Sched.

¹⁷ 11 Jam. Rev. Laws (1980).

¹⁸ 18 I. & N. 1 (B.I.A. 1981). In this case, the Board reconsidered its decision in *Matter of Clahar*, 16 I. & N. 484 (B.I.A.) and modified it upon the urging of the Immigration and Naturalization Service.

provisions of those laws. In this respect, the Status of Children Acts do give children born out of wedlock greater legal protection.

Conclusion

Prior to 1980, a child born in Guyana to unmarried parents was illegitimate at birth.¹⁹ Despite two subsequent developments, it is not clear that this situation has changed under the laws of Guyana. This is because the 1980 constitutional provision that declares: "children born out of wedlock are entitled to the same legal rights and the same legal status as are enjoyed by children born in wedlock" does not appear to empower the courts to strike down any inconsistent laws and the 1983 Children Born Out of Wedlock (Removal of Discrimination) Act does not attempt to generally abolish the legal distinction between legitimate and illegitimate children. Nevertheless, in *Matter of Clahar*, the Board of Immigration Appeals ultimately decided to advance beyond a strict, narrow, or technical reading of Jamaica's similarly ambiguous legitimation laws and hold that all children born to unmarried parents should be regarded as having been effectively legitimated by that country's Status of Children Act. A strong case can be made that the Children Born Out of Wedlock (Removal of Discrimination) Act should be interpreted in the same manner. The available laws of Guyana do not suggest that the Children Born Out of Wedlock (Removal of Discrimination) Act was passed without the intention that it would fully accomplish its stated objective.

Prepared by Stephen P. Clarke
Senior Legal Specialist
February 1990

¹⁹ There are no provisions in the laws of Guyana for the legitimation of a child through recognition. Therefore, the fact that her putative father's name appears on the subject's birth certificate does not affect her status. The appearance of a putative father's name on the birth certificate of a child born to unmarried parents is, however, strong evidence of paternity.